



**ROY COOPER**  
ATTORNEY GENERAL

**State of North Carolina**  
**Department of Justice**  
9001 MAIL SERVICE CENTER  
RALEIGH  
27699-9001

KAREN P. BOWMAN, MANAGER  
COLLECTION SECTION  
N.C. DEPARTMENT OF JUSTICE  
TELEPHONE: (919) 716-6895  
FAX: (919) 716-6071  
E-MAIL: [KBOWMAN@ncdoj.gov](mailto:KBOWMAN@ncdoj.gov)  
A.G.'s Office Website Address  
[www.ncdoj.com](http://www.ncdoj.com)

**OFFICE OF THE ATTORNEY GENERAL**  
**COLLECTION SECTION**  
**GUIDELINES FOR SUBMITTING ACCOUNTS**  
**(REVISED JANUARY, 2006)**

**INTRODUCTION**

The Office of the Attorney General, Collection Section, collects delinquent student loan accounts, account receivable accounts and other types of debt for the State Universities and Community Colleges. In addition, the Collection Section also collects account receivable accounts and other types of debt for the State of North Carolina's various State Agencies. This guide is written in order to provide information and forms on how this office collects delinquent accounts for the State Universities, Community Colleges and State Agencies.

**FORMS**

Each State University, Community College, or State Agency, (hereinafter Agency Creditor), submitting accounts to the Office of the Attorney General, Collection Section (Collection Section) for collection is requested to use the following pre-approved forms when submitting accounts for collection:

- (1) Student Loan Accounts (See Form 1)
- (2) Accounts Receivables (Use appropriate form for School or State Agency- See Forms 2 and 3)
- (3) Excel Spreadsheet (Forms may be converted to an excel spreadsheet and e-mailed to the Collection Section Manager)

If an Agency Creditor wishes to submit accounts in a different format than the ones listed above, approval must be given from the Collection Section Manager **before** accounts are submitted. More complex cases referred by a State Agency for collection may justify submission in a different format. Please limit lists to no more than one hundred **(100)** accounts per month. To submit accounts of more than one hundred (100) per month requires permission from the Collection Section Manager **before** submitting the accounts. All list forms may be mailed, faxed or e-mailed to the Collection Section. **All accounts must be submitted in alphabetical order.**

### **ADDRESSES FOR DEBTORS**

**Remember to use an asterisk (\*) and highlight the Debtor's name or social security number to indicate if a Debtor's address is known to be inaccurate.** Due to the high volume of accounts submitted to the Collection Section, it is primarily the responsibility of the Agency Creditor, to which the debt is owed, to obtain an accurate address on the Debtor. If an accurate address is needed, the Collection Section will perform a research through the N.C. Division of Motor Vehicles database, use various internet sites for skip tracing or submit the name, social security number, and last known address to the N.C. Department of Revenue's Individual Income Tax Division to try and obtain a good address. Keep in mind, after the list is submitted to the N.C. Department of Revenue it may take a few days to receive the information and will result in the demand letters from this office not going out until this information is received.

**Do not submit the Debtor's name alone, without either an address or social security number, on the account list form. A social security number must be provided in order to obtain information about a Debtor from the N.C. Department of Revenue.**

### **PROCESSING GUIDELINES**

The Collection Section follows the following guidelines when processing accounts for collection:

- Lists are processed in the order they are received from the Agency Creditors.
- At the top of each list an Agency Creditor must fill out the required information which includes:

- Name of Institution, School, or Agency (For Student Loan list and Account Receivables list)
- Date Submitted: (Date list is mailed to the Collection Section)
- Submitted By: (Name of person submitting list)
- Reply To: and cc: on D/L: (The contact person's name from the Agency Creditor whom a Debtor will call in reference to the demand letter and the contact persons' name who will be copied at the bottom of the demand letter. These names should be the same.
- Telephone No.: Contact Person's telephone number
- E-Mail Address: Contact Person's e-mail address

**PLEASE NOTE: IF A CONTACT PERSON CHANGES AT THE AGENCY CREDITOR YOU MUST INFORM THE COLLECTION SECTION SO CHANGES CAN BE MADE TO THE FORM DEMAND LETTER.**

- For each submitted student loan list, total indebtedness for each Debtor is computed (e.g., total principal due, interest and late charges). These figures are utilized in the demand letters. (See Sample Demand Letters for University, Community College and State Agency)
- For each submitted account receivables list, total indebtedness for each Debtor should be listed. An Agency Creditor should list a breakdown separately of the principal amount due, the state rate of interest due, late charges due and any other costs that a Debtor may owe and indicate if you want this listed in the demand letter.
- If an Agency Creditor wants the contact person's e-mail address listed in the demand letter, please indicate this on the form by writing **PLEASE INCLUDE E-MAIL ADDRESS IN DEMAND LETTER.**
- The original demand letter is sent to the Debtor and two additional copies of the demand letters are photocopied. One copy is retained in the active files of the Collection Section and one is forwarded to the Agency Creditor with a memorandum stating when the responses from the demand letters are due back to Collection Section. (See Memorandum: To University/Agency with Respond Date for Responses to Demand Letters.
- The Debtor is given thirty (30) days from the date of the demand letter to respond.

- The Agency Creditor should notify the Collection Section within forty-five (45) days from the date of the demand letter what response, if any, the Agency Creditor has received from the Debtor. The codes to be used for the responses are listed below as well as in the above-referenced memorandum: (See Attachment 1)

(PD) Paid

(SR) Satisfactory Response

(N/R) No Response (A.G.'s Office will make a recommendation)

(N/R SUE) No Response (A.G.'s Office will file lawsuit)

(N/R CA) No Response (Client will send to Collection Agency)

(UR) Unsatisfactory Response (A.G.'s Office will make a recommendation)

- Should the Debtor contact the Agency Creditor, after receipt of a demand letter from the Collection Section, it is the responsibility of the Agency Creditor to handle such an inquiry. The Collection Section only makes repayment agreements after a lawsuit is filed. **If the Debtor contacts the Collection Section, after receiving a demand letter, the Debtor will be referred to the Agency Creditor to make any arrangement for repayment, etc.**
- After the Collection Section forwards the Agency Creditor copies of the demand letters, information regarding each Debtor's account is entered into a database of the Collection Section and demand letters are retained in the file pending the receipt of response codes from the Agency Creditor.
- Once the forty-five (45) day time period has expired, and the Collection Section has received the Agency Creditor's response codes, the Collection Section will make its recommendations for each account.
- The Collection Section recommendation for action will be marked on both the Agency Creditors' list and a list maintained by the Collection Section. This information is also entered into the Collection Section database. The Agency Creditor's list will be returned to the Agency Creditor with a memorandum stating the recommendations of the Collection Section. (See Attachment 2)

- If any demand letter is returned from the Post Office because of an insufficient address, the Collection Section will mark the code (NAN) (New Address Needed) on the returned envelope and letter and return it to the Client. **Please resubmit any letters returned NAN on a new list after an accurate address is obtained for the Debtor.** The Debtor's account must be resubmitted because the dates in the letter will be incorrect and the Debtor must be afforded thirty (30) days in which to repay the debt. (See Attachment 3)

### **STATUTE OF LIMITATIONS**

All account receivables submitted for collection should be reviewed to ensure that the statute of limitations has not run. The statute of limitations will be three (3) years on most account receivables. See N.C.G.S. §1-52. (Attachment 4) If the promissory note or contract is "under seal" there is a ten (10) year statute of limitations. See N.C.G.S. §1-47 (Attachment 5) On federal loans (Perkins) there is no statute of limitations. See 20 U.S.C.A. §1091(a). (Attachment 6) If an Agency Creditor desires to try to collect a debt that the statute of limitations has run, they may submit their account to the Collection Section for a demand letter to be sent to the Debtor. The Agency Creditor may, also, send an account where the statute of limitations has run to a state-contracted collection agency for collection. **The Debtor has the burden of proof of bringing the defense that the statute of limitations has run. Once a Debtor raises this defense the collection agency and the Collection Section will stop all collection proceedings and return the account to the Agency Creditor with the code (SOL), which means Statute of Limitations has run and the account is considered uncollectible.**

### **INTEREST AND PENALTIES**

Pursuant to N.C.G.S. § 147-86.23, the N.C. Department of Revenue sets a statutory rate of interest which shall be charged on all past due Account Receivables from the date due until paid. As of January 1, 2006, the statutory rate of interest is seven percent (7%). Please note the statutory rate of interest may change and the N.C. Department of Revenue will send notice to the Collection Section every six (6) months to update this rate. In addition, a late penalty fee of no more than ten percent (10%) of the amount owed on an account may be charged on all past due accounts. All accounts on which these amounts are charged should show these amounts separately from the principal and interest.

### **GENERAL ACCOUNTS RECEIVABLE: COLLECTION V. WRITE-OFF**

- Account Receivables, which had N/R (no response) from the demand letter, and are \$25.00 or less, are recommended to be written off (W/O).
- Account Receivables in amounts over \$25.00 should be placed with a State-contracted collection agency.
- **PLEASE NOTE: ONCE AN ACCOUNT IS TURNED OVER TO A COLLECTION AGENCY YOU CANNOT CHARGE THE COLLECTION AGENCY FEE TO A DEBTOR. YOU, HOWEVER, MAY STILL CHARGE THE STATUTORY RATE OF INTEREST AND THE LATE PENALTY FEES TO THE DEBTOR.**

### **STUDENT LOAN ACCOUNTS: COLLECTION V. WRITE-OFF**

- Student loan accounts, with a N/R CA recommendation for any dollar amount are recommended to be submitted to one of the State-contracted collection agencies.
- Student loan accounts, with a N/R SUE recommendation in the amount of \$200.00 or more, are recommended for lawsuit. If the Debtor lives out of state, and the promissory note was signed in North Carolina, the Collection Section will file a lawsuit and serve the complaint by certified mail.
- If the Debtor lives out-of-state, and the Collection Section cannot serve the Debtor, the Collection Section recommends that the account be submitted to a State-contracted collection agency.

**\*\*\*\*\* PLEASE REFER TO CASH MANAGEMENT FOR THE STATE POLICY (Attachment 7) and ACCOUNTS RECEIVABLE POLICY OVERVIEW BY THE OFFICE OF THE CONTROLLER (Attachment 8)**

## **FILING A LAWSUIT**

### **FOR UNIVERSITIES AND COMMUNITY COLLEGES**

- For all student loan Debtors on whom suit is anticipated, four (4) copies of Promissory Notes, should be forwarded to the Collection Section at the time a response code is sent.
- Lawsuits are prepared from information submitted by the Agency Creditor on the Debtor's account. To assure that all information on a Debtor is correct and current, a **"Suit Preparation Worksheet"** must be submitted. (See Attachment 9)
- The Collection Section prepares one (1) original (white summons) and three (3) (yellow summons) to be attached to one (1) original bond and three (3) copies of the complaint on each defendant. (See Attachment 10)

The four (4) sets of the summons and complaints are prepared for each of the following:

··University or Community College

··Defendant

··Clerk's Office, and

··Attorney General's Office.

- Once the lawsuit, (hereinafter referred to as "complaint"), is drafted, please check to make sure all amounts, including principal amount owed, interest rates, interest from dates, late charges (if any), and collection costs (if any) are correct. Verify the accuracy of names and addresses and any information previously submitted has not changed since the time the accounts were originally submitted to the Collection Section. (See Sample Complaint, Attachment 11)
- If a change needs to be made to the complaint or summons, after review by the Agency Creditor, the Agency Creditor should return the originals and all copies of the summons and complaint back to the Collection Section with the requested changes. The Collection Section will make the necessary corrections and return the complaint and summons to the Agency Creditor for filing.

- The Verification page is included as the last page of the complaint (before the exhibits). (See Attachment 12) **The person verifying the complaint must always sign the original and all copies of the verification in front of a Notary Public and have the original and all copies notarized.** N.C.G.S. § 1A-1, Rule 11. (See Attachment 13)
- The University or Community College is responsible for obtaining a check issued in the amount of \$80.00 (current costs for filing in District Court) or \$95.00 (current costs for filing in Superior Court) to cover costs of filing each lawsuit. The check should be made payable to the Clerk of Superior Court of the county in which you are filing the lawsuits. (See Attachment 14)
- The University or Community College is responsible for obtaining a check issued in the amount of \$15.00 (current costs for serving a complaint by the sheriff's department), made payable to the Sheriff's department of the county in which the person being served lives. **If service is made by certified mail, it is not necessary to issue a check to the Sheriff's Department.**
- The Sheriff's Department has 60 days after the date of the issuance of a summons, see N.C. Gen. Stat. § 1A-1, Rule 4, except in tax and assessment foreclosures under N.C. Gen. Stat. § 105-391 or N.C. Gen. Stat. § 105-414, to make personal service or substituted personal service of summons. Failure to obtain service within this 60 day period does not invalidate the summons. The officer returns the summons to the Clerk of Court, who issued it, with a notation of its nonservice and reasons why the defendant was not served. (See Attachments 15 and 16)
- At this point the Collection Section and the Agency Creditor attempt to obtain an accurate address and complete service of process. Resources that the Collection Section may use to find a good address are as follows:
  - A list to the Department of Revenue's Individual Income Tax Division;
  - The N.C. Division of Motor Vehicles. Under N.C.G.S. § 20-42(b), we may request a certified copy of a DMV record or perform a research through their database;
  - The Employment Security Commission;
  - A letter to the Postmaster asking for verification of an address; or
  - Various Internet Sites.



- Once an accurate address is obtained, the Collection Section prepares an Alias and Pluries Summons. (This summons takes the place of the original summons but gives additional time in which to serve the Debtor). An Alias and Pluries must be secured within 90 days after the issuance of the last summons or the last prior endorsement. (See Attachment 17)
- The Collection Section can serve the Defendant Debtor by certified mail. Service by certified mail is usually selected as the method of service when a person must be served at a Post Office Box, and no street address is available for the Debtor or when the Sheriff's Department is having trouble serving the Defendant Debtor but it is known that the Defendant Debtor does reside at the address on the summons. When preparing a certified mail, return receipt "green card," please remember to always use the Collection Section's address for the return address in order for the Collection Section to be able to file an Affidavit showing the Court that the Defendant Debtor was served. (See Attachment 18) If the certified mail is not claimed, the entire envelope will be returned to the Collection Section to determine why the defendant was not served and to proceed with the next step.
- The Collection Section also can serve the Defendant Debtor at their place of employment, once verified, if service is not successful at the Debtor's residence.
- Another means of serving the Defendant Debtor is by a designated delivery service (i.e. FedEx or UPS) as authorized pursuant to 26 U.S.C. § 7502(f)(2), and N.C.G.S. § 1A-1, Rule 4 (2)(j)(d) by depositing a copy of the summons and complaint, addressed to the party to be served, delivering to the addressee, and obtaining a delivery receipt. (See Attachments 16 and 19)
- If a summons and complaint have been returned unserved by a Sheriff's Department, the unserved complaint will be located in the Clerk of Superior Court's file.
- When the Agency Creditor files the Alias and Pluries Summons at the Clerk of Court's office, the returned complaint must be attached to the Alias and Pluries Summons.
- If the summons and complaint, which were served by certified mail, are returned by the post office, either unclaimed or with a new address, the copy that indicates that the documents were returned by the post office must be attached to the Alias and Pluries Summons.
- When the Collection Section receives the certified mail, return receipt "green card" back from the Post Office, an Affidavit of Service by Certified Mail is prepared, signed by the Collection

Manager, and notarized by a Notary Public. It is then filed with the Clerk of Superior Court's office. The Collection Section copies the Defendant/Debtor with the Affidavit on the day it is mailed to the Clerk of Superior Court for filing. When the Collection Section receives the filed copy from the Clerk's Office the Collection Section mails a filed copy to the Defendant/Debtor, the University or Community College and retains a filed copy for the Collection Section files.

- Once the Defendant/Debtor is served, he has thirty (30) days to file an answer with the Clerk of Court's office. If no answer is filed within (30) days, the Collection Section and the University or Community College will decide whether to file a Motion for a Default Judgment against the Defendant/Debtor.

### **UNIVERSITIES AND COMMUNITY COLLEGES**

#### **INSTRUCTIONS FOR FILING LAWSUITS**

- Complaints (originals and copies) **MUST BE VERIFIED**, before a notary public, by the person authorized by the institution or community college to make a verification.
- Take everything–Verified complaints with summons and checks to the Clerk of Superior Court in the county where the University or Community College is located, for filing.
- When proper entries have been made by the Clerk, the original complaint is retained for the Court records and the Clerk will return the white summons and copies of the complaint with yellow summons to the Agency Creditor.
- Address an envelope to the sheriff of each county indicated on the summons (located after the defendant's address).
- Retain one copy of filed yellow summons and complaint for the State Agency Creditor files. Mail a copy of the complaint with white and yellow summons attached, and a check in the amount of \$5.00, made payable to the sheriff's department of the county indicated on the summons to the sheriff. The sheriff will return the white summons to the Clerk of Court for their records to show if the Defendant/Debtor was served and the date he was served. If the summons was not served, the sheriff's department will mark the summons appropriately.

- If the complaint is to be served by certified mail, return the original white summons to the Clerk of Court. (In some cases, the Clerk's Office will not accept the summons at this time) If this happens please mail the white summons to the Collection Section. The Collection Section will prepare, and file with the Clerk of Court, an Affidavit of Service of Process once the defendant is served and the "green card" is returned to the Collection Section.

### **COLLECTING STATE AGENCY ACCOUNT RECEIVABLES**

Accounts that may be submitted by State agencies include, but are not limited to, salary overpayments, contract work completed by a State agency which has not received payment, fees owed to a State agency, checks returned unpaid for insufficient funds, civil penalty assessment fines, and nonpayment for goods bought by an individual or company from a State agency. The Processing of Accounts referred to in the Attorney General's Guidelines, Page One (1), also apply to the collection of accounts for State Agencies.

### **FILING A LAWSUIT FOR A STATE AGENCY**

- The Collection Section will file a lawsuit on behalf of a State agency if the amount of the account is \$200.00 or more, or
- If the account is an amount of \$200.00 or more you may submit the account to a State-contracted collection agency.
- If the account is an amount less than \$200.00, the account should be submitted to a State-contracted collection agency.
- Documents that need to be provided to the Attorney General's Office include:
  - All correspondence with the Debtor, (i.e., demand letters sent to the Debtor from the State agency or any correspondence received from the Debtor concerning the account);
  - Any signed contracts;
  - Any forms used in payroll which showed an overpayment was made to the Debtor;

- Any document that would show proof of monies owed to the State Agency.
- The Collection Section will coordinate with your assigned Attorney General attorney representative in preparing and filing lawsuits for State agencies, however, it will be the State agency's responsibility to obtain all checks for filing fees and service of process fees.
- The State agency will be responsible for providing a contact person's name, address, telephone number, etc. who is familiar with the debt and will be able to answer any questions regarding the account.
- The State agency will be responsible for providing the name, title, etc. of the person who will verify the complaint on behalf of the State agency.

### **REPAYMENT AGREEMENTS AFTER FILING OF LAWSUIT**

#### **UNIVERSITIES, COMMUNITY COLLEGES**

#### **AND STATE AGENCIES**

When a Defendant/Debtor is served with the civil summons and complaint, and the Collection Section is contacted by the Defendant/Debtor, the Collection Manager can set up a repayment agreement with the Debtor. A letter confirming this repayment agreement is mailed to the Defendant/Debtor and the letter states if the Defendant/Debtor agrees with the repayment agreement he/she is to sign the letter, at the designated signature line, and return the signed original letter back to the Collection Section. (See Sample Repayment Agreement Letter) A copy is sent to the Agency Creditor and a copy is placed in the Defendant/Debtors' Attorney General's file. In a repayment agreement, the Debtor is required to make all payments payable to the University, Community College or State agency and to remit the payment to the Attorney General's Office, Collection Section. If a State agency will not accept repayment agreements (monthly payments), the Collection Section must be informed. If a Debtor is proposing to pay the account in full, the Collection Section will verify payoffs with the Agency Creditor before giving this information to a Debtor.

### **CREDITING PAYMENTS TO A DEBTORS ACCOUNT**

When the Collection Section receives a payment from a Debtor, a letter is written to the Debtor acknowledging the date of the payment and the amount of the payment. The check, along with a copy of the letter to the Debtor, is then forwarded to the Agency Creditor. A copy of the letter and the payment (personal check, certified check, money order) are filed in the Debtor's Attorney General's file. (See Sample Receipt of Payment Letter)

**\*\*\* Please Note - The Attorney General's Office Collection Section has a credit card machine and will take Visa or MasterCard credit card payments from a debtor to be applied to a delinquent account owed to an Agency Creditor. The funds will be transferred to the Agency Creditor from the Attorney General's Office funds.**

### **AMENDED COMPLAINT**

If a Defendant/Debtor has been attempting to repay the debt owed, after the Collection Section has served him with the lawsuit, and the Defendant/Debtor did not file a responsive pleading with the court, but stops making his payments, the Collection Section can file an Amended Complaint. In the complaint the amount of principal and interest is amended, from the date on which the last payment was made, due to a change in the amount originally sued for in the complaint. The Amended Complaint is then filed with the Clerk of Court's Office and a copy is served on the defendant by Certificate of Service. To insure that the Defendant/Debtor receives the Amended Complaint, the Amended Complaint is mailed to the Defendant/Debtor by certified mail, return receipt requested. If the Defendant/Debtor does not answer the amended complaint within thirty (30) days, the Collection Section can submit a Motion for Default Judgment.

### **MOTION TO AMEND THE COMPLAINT AND ORDER**

If there are any changes that need to be made to the complaint, after it is initially filed with the Clerk of Court's office, the Collection Section may file a Motion to Amend the Complaint, with the amendments listed. A District Court Judge can sign an Order, at a scheduled motion hearing in district court, allowing the complaint to be amended. Changes to the complaint could be, but are not limited to, defendant's name, the principal amount, the interest from date, late charges, or collection costs. A motion is not necessary unless the defendant has filed a responsive pleading. N.C.G.S. § 1A-1, Rule 15 (See Attachment 20)

## **MOTION FOR DEFAULT JUDGMENT**

### **AND ENTRY OF DEFAULT**

Once a lawsuit is filed and the defendant is served, the defendant has 30 days in which to file a written response with the Court. If a response is not filed, the Collection Section can seek a Default Judgment.

- Pursuant to N.C.G.S. § 1A-1, Rule 54(a). (See Attachment 21) - A judgment is the final determination of the rights of the parties.
- Pursuant to N.C.G.S. § 1A-1, Rule 55(a) and (b) (See Attachment 22) - The Clerk may enter an entry of judgment by default when the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, for that amount and costs against the defendant, if the defendant has defaulted for failure to appear and if the defendant is not an infant or competent person.

## **OTHER TYPES OF MOTIONS FOR JUDGMENTS**

### **MOTION FOR JUDGMENT ON THE PLEADINGS** **AND** **MOTION FOR SUMMARY JUDGMENT**

**Motion for Judgment on the Pleadings - N.C. Gen. Stat. § 1A-1, Rule 12.** (See Attachment 23) If a defendant answers the Complaint filed against him within the 30 day time to answer, but does not deny owing the debt and does not make any attempt to repay the debt, the Collection Section can file a Motion for Judgment on the Pleadings. This motion is filed with the Clerk of Court's Office and a copy is, also, served on the defendant. The Collection Section will ask the Court to calendar the case for a hearing on the Motion or the court, on its own initiative, can set the case on the court calendar. Unless the defendant pays the debt, the Collection Section can obtain a Judgment against the defendant in court before a judge. N.C.G.S § 1A-1, Rule 58.

**Motion for Summary Judgment: N.C.G.S. § 1A-1, Rule 56.** (See Attachment 24) If a defendant makes a repayment agreement with the Collection Section and begins making payments, but then stops, the principal amount owed and interest from date would change from the amount sued for in the complaint. When this occurs, the Collection Section will file a Motion for Summary Judgment showing the new amount owed. Attached to the Summary Judgment Motion will be an Affidavit which states the dates payments were made and how payments were applied to the debt. The Affidavit is a sworn statement from a person familiar with defendant's account at the Agency Creditor. The motion and affidavit are filed with the Clerk of Court's Office and a copy is served on the defendant. Unless the defendant pays the debt the Collection Section can seek a Judgment against the defendant in court before a judge. N.C.G.S § 1A-1, Rule 58. (See Attachment 25)

**An Agency or University Creditor is not allowed to charge a Debtor with any other costs once a Judgment has been filed against him. This includes any judgment account submitted to a collection agency. The University or Community College must pay the collection agency fee from the fund or other means. NO FEES MAY BE CHARGED TO THE DEBTOR ONCE A JUDGMENT HAS BEEN FILED. THE AMOUNT OF THE JUDGMENT IS FOR A SUM CERTAIN AND IS THE FINAL DETERMINATION BY COURT ORDER.**

### **RENEWAL OF JUDGMENT**

Before the expiration of the original judgment, a judgment can be renewed for an additional ten (10) years. The process of renewing a judgment is to file and serve the defendant with a new lawsuit. The original judgment is the exhibit attached to the lawsuit.

### **PAYMENT BY DEBTOR ON JUDGMENT**

**Pursuant to N.C. Gen. Stat. § 1-239,** (See Attachment 26) the clerk shall enter the payment on the judgment docket of the court. If the judgment Creditor fails to file the notice required by this statute within 30 days following **written** demand by the Debtor, he may be required to pay a civil penalty of \$100.00 in addition to attorney fees and any loss caused to the Debtor by such failure.

**Pursuant to N.C. Gen. Stat. § 1-242,** (See Attachment 27) where a payment has been made on a judgment docketed in the office of the Clerk of the Superior Court, and no entry made on the judgment docket, "any person interested therein may move in the cause before the clerk, upon affidavit after notice to all persons interested, to have such credit, reversal or modification entered."

When a Debtor makes a payment to be credited toward the judgment it is the responsibility of the judgment Creditor (University, Community College or State agency) to give notice of the payment to the Clerk of Superior Court within **sixty (60)** days after receipt of the payment.

**DO NOT forget to credit all payments to judgments within a thirty (30) day period. Each Agency Creditor should set aside one (1) day out of each month to go to the courthouse to have payments credited to the judgment accounts.**

If an Agency Creditor is unable to go to the courthouse one (1) day each month, it will be necessary to ascertain from the Clerk's Office if the Agency Creditor may be allowed to use the form entitled Authorization to Credit Judgment. (See Sample Form) The form should be completed with the necessary information and filed with the Clerk's office. Be sure to serve a copy on the defendant to show that this credit has been made on the judgment account. The Clerk's Office may also provide to you an approved Administrative Office of the Courts form, or you can obtain the form from the Attorney General's Office, Collection Manager which you can file with the Clerk of Court to show any payments made and to show when a Judgment has been paid in full and satisfied.

### **DISMISSALS**

If the Collection Section cannot obtain service, either by the sheriff's department or by certified mail, in the time allowed by N.C. Gen. Stat. §1A-1, Rule 41, (See Attachment 28) a Voluntary Dismissal will be filed. A new action based on the same claim may be commenced within one (1) year after such dismissal.

Other Reasons for Filing a Voluntary Dismissal:

- Defendant has paid the account in full;
- Defendant is making regular and satisfactory monthly payments to repay the account;
- Defendant has requested and received student deferment (after paying court costs);
- Defendant has requested and received teacher cancellation (after paying court costs);
- Defendant has requested and received a hardship/economic deferment (after paying court costs);



- Defendant has moved out of the state of North Carolina and the Collection Section has not been able to serve defendant;
- Plaintiff is remitting account to a State-contracted collection agency for collection.

### **VOLUNTARY PAYROLL DEDUCTION**

To collect a debt owed by a Debtor who is employed by a state agency the Agency Creditor should follow the guidelines of the Budget Manual for the State of North Carolina, Office of State Budget, Planning and Management **(Please see Fiscal Policy and Regulations, Page 133; Effective Date: 6/1/03 of the Budget Manual and accompanying forms for use in obtaining voluntary payroll deduction on Debtors who are State Employees)** **Repayment of Money Owed to the State - State Employees and Certain Local Educational Entity Employees.** (See Attachment 29)

N.C. Gen. Stat. § 143-553(a) states that “All persons employed by an employing entity (see definition contained in G.S. 143-552), as enumerated in G.S. 143B-3 of the ‘Executive Organization Act’ who owe money to the state and whose salaries are paid in whole or in part by state funds must make full restitution of the amount owed as a condition of continuing employment.” (See Attachments, 30, 31 and 32)

Also, under **N.C. Gen. Stat. . § 143-64.80. Overpayments of State funds to persons in State-supported positions; recoupment required.** This law was passed by the Legislature in 2003 and states:

(a) An overpayment of State funds to any person in a State-funded position, whether in the form of salary or otherwise, shall be recouped by the entity that made the overpayment and, to the extent allowed by law, the amount of the overpayment may be offset against the net wages of the person receiving the overpayment;

(b) No State department, agency, or institution, or other State-funded entity may forgive repayment of an overpayment of State funds, but shall have a duty to pursue the repayment of State funds by all lawful means available, including the filing of a civil action in the General Court of Justice.

The Office of State Budget, Planning and Management will assist in verifying whether a Debtor is a state employee. As of 2005, the contact person is as follows:

Paul Young  
System Analyst  
Office of State Budget and Management  
20320 Mail Service Center  
Raleigh, NC 27699-0230  
(919) 733-7061  
E-Mail: paul.young@ncmail.net

There are specific guidelines used to submit names to this department for verification of employment. Once it is verified that the Debtor is a current state employee, the Agency Creditor should write the Debtor and request payment, citing N.C. Gen. Stat. § 143-553(a) or N.C. Gen. Stat. § 143-64.80 and inform the Debtor if payment is not made on the debt, the employee's employer will be notified in accordance with the statute. (See Sample Form Letters)

#### **SET OFF DEBT COLLECTION ACT - N.C. Gen. Stat. § 105A**

N.C. Gen. Stat. § 105A-3(b) – (See Attachment 33) **Mandatory State Usage:** A State agency must submit a debt owed to it for collection under this Chapter unless the State Controller has waived this requirement or the State agency has determined that the validity of the debt is legitimately in dispute, an alternative means of collection is pending and believed to be adequate, or such a collection attempt would result in a loss of federal funds. The State Controller may waive the requirement for a State agency, other than the Department of Health and Human Services or a county acting on behalf of that Department, to submit a debt owed to it for collection under this Chapter if the State Controller finds that collection by this means would not be practical or cost effective. A waiver may apply to all debts owed a State agency or a type of debt owed a State agency.

The Collection Section will submit Debtor information to the N.C. Department of Revenue for debts owed to the N.C. Department of Justice through the Set Off Debt Collection Act. Other State agencies should register with the Department of Revenue and the State Controller's Office (unless the

State Agency Creditor has previously been registered) in order for each Agency Creditor to submit its delinquent accounts to the Department of Revenue for Set Off Debt Collection.

### **BANKRUPTCY**

If you receive a Notice of Bankruptcy you must immediately cease all collection efforts. Most Agency Creditors will receive Chapter 7 (Asset Case or No Asset Case) or Chapter 13 (See Attachments 34, 35, and 36). The Agency Creditor is prohibited from engaging in collection activity against the Debtor and certain co-debtors as listed under 11 U.S.C.S. § 362 - Automatic Stay. (See Attachment 37)

The Agency Creditor will receive a Proof of Claim form. (See Attachment 38) This form is a signed statement describing a creditor's claim. If you do not file a Proof of Claim by the deadline to file a proof of claim you might not be paid any money on your claim against the Debtor.

By filing a Chapter 7 Bankruptcy the Debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the Debtor. A Debtor filing a Chapter 13 Bankruptcy allows an individual with regular income and debts below a specified amount to adjust debts pursuant to a plan. A plan is not effective unless confirmed by the bankruptcy court. The Debtor is seeking a discharge of most debts, which may include your debt. The Debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the Debtor's case is converted to Chapter 7.

A student loan cannot be discharged under bankruptcy unless excepting such debt from discharge will impose an undue hardship on the Debtor and the Debtor's dependents. 11 U.S.C.S. § 523(a)(8) (See Attachment 39)

If a bankruptcy court determines a Debtor is entitled to a discharge, you will receive a signed and dated order entitled DISCHARGE OF DEBTOR. (See Attachment 40). If a bankruptcy court determines a Debtor is not entitled to a discharge, you will receive a signed and dated order entitled ORDER DENYING DISCHARGE or DISMISSAL OF BANKRUPTCY.

## **CONCLUSION**

The Attorney General's Office, Collection Section, hopes the information provided in the Guidelines is helpful in your pursuit to collecting delinquent or past due accounts. Questions about the collection of accounts by Agency Creditors may be directed to:

**Karen P. Bowman**  
**Manager Collection Section**  
**N.C. Department of Justice**  
**9001 Mail Service Center**  
**Raleigh, NC 27699-9001**  
**Telephone: (919) 716-6895**  
**Fax: (919) 716-6071**  
**E-Mail: [kbowman@ncdoj.gov](mailto:kbowman@ncdoj.gov)**